

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.173 OF 2007.

M/s.Bharat Petroleum Corporation Ltd. ... Petitioner.
Versus.
Sunil Niranjan Jhaveri. ... Respondent.

Shri D.G.Bagwe with Shri S.G.Page and Shri S.R.Page for
the Petitioner.

CORAM : ABHAY S.OKA, J.

DATED : 4th May, 2007.

P.C.:

1. The Petitioner M/s.Bharat Petroleum Corporation Ltd. by this Civil Revision Application has challenged the decree for possession passed by the learned Judge of the Small Causes Court at Mumbai and confirmed by the Appeal Bench of the Small Causes Court.

2. The subject matter of the present Revision Application is flat Nos.3 and 4 on the first floor and flat No.6 on the second floor along with two servants' quarters and sheltered space for parking three cars in a Building known as Jhaveri Mansion, Malabar Hill, Mumbai. By an indenture of lease dated 11th February 1964 executed by the grandfather of the Respondent, a lease in respect of the suit premises was granted in favour of Burmah Shell Oil Storage and Distributing Company of India Ltd. The lease was for a period of 10 years commencing from 1st January 1964 and ending on 31st December 1973. There was a clause in the lease for

renewal. It must be stated here that the grandfather of the Respondent died on 27th September 1972. The Respondent, who is the grandson of the original landlord, claims to have become owner and landlord in respect of the suit premises on the basis of a Will executed by his grand father. On 29th September 1973, the father of the Respondent on behalf of the Respondent, who was a minor at that time, executed an agreement in favour of the predecessor of the Petitioner by which the lease in respect of the suit premises was renewed on the terms and conditions incorporated therein. On 18th June 1973 there was a deed of indemnity executed by the father of the Respondent in favour of the predecessor of the Petitioner. By virtue of the provisions of Burmah Shell (Acquisition of Undertakings in India) Act, 1976 the right, title and interest of the M/s.Burmah Shell Oil Storage and Distributing Company of India Ltd. stood transferred to and vested in the Union of India. On the same day i.e. on 24th January 1976, a notification was issued by the Union of India under section 7 of the said Act of 1976. On February 2, 1976 a fresh certificate of incorporation was issued effecting the change of the name of the Government company from M/s.Burmah Shell Oil Storage and Distributing Company of India Ltd. to that of M/s.Bharat Refineries Ltd. Subsequently, the name of M/s.Bharat Refineries Ltd was changed to Bharat Petroleum Corporation Ltd. i.e. the present

Petitioner.

3. On 21st October 2002, the Respondent issued notice of termination of tenancy under section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as the said Act of 1882). After coming into force of the Maharashtra Rent Control Act, 1999 with effect from 31st March 2000, the Petitioner ceased to have protection of the said Act of 1999 or any other Rent Control Legislation in view of the provisions of section 3(1)(b) of the said Act of 1999. On the basis of the notice of termination, the Respondent filed a suit which was contested by the Petitioner. The contention raised by the Petitioner was that the Respondent was claiming to be the landlord on the basis of the will executed by his deceased grandfather and in the absence of any probate in respect of the said will, the Respondent was not entitled to claim any rights on the basis of the said will. The trial Court decreed the suit. In appeal preferred by the Petitioner for challenging the decree passed by the trial Court, an application was made by the Respondent for production of the Probate granted by this Court on 23rd April 2004. The Appeal Bench has confirmed the decree of eviction.

4. The learned Counsel appearing for the Petitioner submitted that in view of the provisions of section 213 of the Indian Succession Act, 1925 the suit filed by the

Respondent was not maintainable. He submitted that the Respondent belatedly applied for grant of probate and the same was granted on 23rd April 2004. He submitted that no case was made out by the Respondent under Rule 27 of Order LXI of the Code of Civil Procedure, 1908 for production of additional evidence in the form of the probate. He submitted that there was no explanation as to why the Respondent waited till the year 2004 for applying for the probate when an objection was raised by the Petitioner by filing written statement. He submitted that the Courts below were impressed by the fact that in the year 1973, a further agreement was executed by and between the predecessor of the Petitioner and the father of the Respondent in his capacity as the guardian of the Respondent. He pointed out that an indemnity bond was executed by the father of the Respondent on 18th June 1973 and that is the reason the agreement was executed on 29th September 1973. He lastly placed reliance on the decision of the Division Bench of this Court in the case of Ramniklal Amritlal Shah v/s. Bhupendra Impex Pvt.Ltd. (AIR 2001 Bombay 224).

5. I have carefully considered the submissions made on behalf of the Petitioner. A perusal of the Judgments of both the Courts below shows that a finding of fact has been recorded that an agreement was executed on 29th September 1973 by and between the father of the

Respondent in his capacity as guardian of the Respondent and the predecessor of the Petitioner. The Appeal Court has relied upon the said agreement and has recorded a finding that the predecessor of the Petitioner accepted the Respondent as the landlord and relationship of landlord and tenant was thus admitted. The Appeal Court has relied upon the letters which have been addressed by the Respondent to the Petitioner. The Appeal Bench has relied upon the letter dated 9th June 1982 sent on behalf of the Petitioner to the Respondent annexing thereto a cheque towards the rent for June 1982. The Appeal Court has referred to letter dated 1st June 1995 addressed by the Petitioner to the Respondent. Considering the agreement and correspondence between the parties, a finding of fact has been recorded by the Appeal Court that the Petitioner has accepted the Respondent as the landlord in respect of the suit premises.

6. It must be stated here that all along the Respondent relied upon the Will executed by his grand father. There is no prescribed limitation for applying for probate or letters of administration. The fact remains that the will was probated during the pendency of the Appeal. The Appeal Court exercised discretion under Rule 27 of Order LXI of the said Code and allowed production of the Probate. The Application for grant of probate was made after the trial Court passed the decree

and the probate was granted during the pendency of the Appeal. Obviously the Probate could not have been produced before the trial Court. It is true that the Respondent could have applied for probate earlier after the objection was raised by the Petitioner. It must be noted here that there is a finding of fact recorded that prior to the institution of the suit, the Petitioner accepted the Respondent as landlord in respect of the suit premises. Therefore, it is difficult to find fault with the Respondent for not applying for probate earlier. Considering these peculiar facts, it is difficult to find fault with the exercise of discretion by the Appeal Court under Rule 27 of Order LXI of the said Code.

7. Considering the concurrent findings of fact, no case is made out for interference under the limited jurisdiction under section 115 of the said Code.

8. The Revision Application is rejected.

9. The learned Counsel appearing for the Petitioner prays that stay may be granted to enable the Applicant to approach the higher Court. The said prayer is opposed by the Advocate for the Respondent. Considering the facts and circumstances of the case, the decree for possession shall not be executed till 31st August 2007 subject to condition that the Petitioner will not create

: 7 :

any third party interests and will not part with possession of the suit premises.

Judge.